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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ABRAMSON,

Defendant and Appellant.

F042259

(Super. Ct. No. SC056864A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Roger D. Randall, Judge.

Thomas A. Schaaf, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Lloyd G. Carter and Brian Alvarez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Buckley, Acting P.J., Cornell, J. and Dawson, J.

INTRODUCTION

Appellant Robert Abramson challenges his commitment as a sexually violent predator on the basis of instructional error and violation of due process. We will affirm the judgment.

STATEMENT OF THE CASE AND FACTS

On March 14, 2002, a petition seeking to extend Abramson's civil commitment as a sexually violent predator was filed in Kern County Superior Court. Abramson stipulated that he previously had been convicted of two prior, qualifying sexually violent offenses and found to be a mentally disordered sex offender. Two experts testified that Abramson was a pedophile who met the criteria of a sexually violent predator. One expert witness for the defense opined that Abramson had a homosexual orientation and exhibited poor judgment, but he did not have serious difficulty controlling his behavior.

On January 7, 2003, a jury found Abramson to be a sexually violent predator. The trial court ordered Abramson's commitment to Atascadero State Hospital be extended for a period of two years, commencing on May 27, 2002.

DISCUSSION

Abramson contends that due process requires the trier of fact to find that a person has serious difficulty in controlling his behavior as a consequence of a diagnosed mental disorder and that CALJIC No. 4.19 fails to require that a jury make this finding. He acknowledges in his opening brief that the California Supreme Court has addressed this issue and resolved it adversely to his position.

Welfare and Institutions Code¹ section 6600, subdivision (c) defines a diagnosed mental disorder as "a congenital or acquired condition affecting the emotional or

¹ Statutory references are to the Welfare and Institutions Code unless otherwise specified.

volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.” This language is included verbatim in CALJIC No. 4.19.

Section 6600, subdivision (a)(1) defines a sexually violent predator as one who “has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” In *Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, the California Supreme Court concluded that this language links the finding of a currently diagnosed mental disorder to the inability to control dangerous sexual behavior. (*Id.* at p. 1158.) The language that *Hubbart* concluded constituted the link between the finding of a current mental disorder and the inability to control sexually violent criminal behavior is also set forth in CALJIC No. 4.19.

The California Supreme Court has held that the language of the Sexually Violent Predators Act (SVP Act), section 6600 et seq., inherently and adequately conveys the crucial elements necessary to find that a person is a sexually violent predator. (*People v. Williams* (2003) 31 Cal.4th 757, 769.) The language of CALJIC No. 4.19 (2002 rev.) (6th ed. 1996), as given to the jury in Abramson’s case, tracks the language of the SVP Act. (*Williams*, at p. 763.)

Further, any claim that the instructions failed to adequately apprise the jury of the requirement that it find Abramson has serious difficulty in controlling his behavior as a consequence of a diagnosed mental disorder has been waived. What Abramson seeks is in the nature of a clarifying or pinpoint instruction. If a defendant does not ask at trial that an instruction be clarified, he may not complain on appeal that an instruction is ambiguous or incomplete. (*People v. Mayfield* (1997) 14 Cal.4th 668, 778-779.) The trial court was under no obligation to issue a clarifying or pinpoint instruction in the absence of a request from Abramson. (*People v. Garvin* (2003) 110 Cal.App.4th 484, 488.)

Regardless, we conclude any error was harmless. One psychologist testified Abramson has substantial difficulty controlling his behavior due to his diagnosed mental disorder of pedophilia. A psychiatrist testified that Abramson was a pedophile with a “strong obsessive quality” to engage in proscribed acts, despite an awareness of the consequences. Abramson’s criminal history includes a 1977 conviction for violating Penal Code section 288, subdivision (a), and a commitment to Patton State Hospital as a mentally disordered sex offender. While undergoing treatment, Abramson acknowledged molesting not one but at least three male children. When released on outpatient status, his status as an outpatient was revoked three times because he had difficulty controlling his anger and emotions. In 1993, Abramson was loitering in an area where children were present. In 1994, Abramson was convicted of forcibly orally copulating a 16-year-old boy. When paroled, Abramson violated parole by loitering around a playground. If the instruction were corrected or modified as Abramson suggests, the result undoubtedly would be the same. We therefore conclude that any instructional error was harmless beyond a reasonable doubt. (*People v. Hurtado* (2002) 28 Cal.4th 1179, 1194.)

DISPOSITION

The judgment is affirmed.